

Franchise Law Committee Meeting—Case Update
January 11, 2008
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NEW CASES

In re Magna Cum Latte, Inc., 2007 U.S.Dist.Lexis 4265 (Bankr. Ct. S.D. Tex., Dec. 17, 2007)(applying California law, Court held that franchisor breached the implied covenant of good faith and fair dealing when it refused to exercise option based the concept that “[W]here a contract confers on one party a discretionary power affecting the rights of the other a duty is imposed to exercise that discretion in good faith and in accordance with fair dealing.”)

Smith v. Sara Lee Fresh, Inc., 2007 U.S.Dist.Lexis 94288 (E.D. Cal., Dec. 11, 2007)(arbitration provision upheld, even after a finding that it was part of an adhesion contract)

Stillwell v. RadioShack, 2007 U.S.Dist.Lexis ____ (S.D. Cal., Dec. 18, 2007)(franchisor’s motion to dismiss exclusivity and other breach of contract claims denied; antitrust claims dismissed)

Harara v. Landamerica Financial Group, 2007 U.S.Dist.Lexis 77307 (N.D. Cal., Oct. 9, 2007)(after franchisor/oil company did not renew and offered to sell gas station to the franchise, franchisor and franchisee settled, and new suit filed by the franchisee against escrow company was dismissed based on res judicata—there was a determination in the prior suit that franchisor did not sell to franchisee because the franchisee could not obtain the financing to complete the purchase)

Certified Restoration Dry Cleaning Network v. Tenke Corp., 2007 U.S.App.Lexis 29180 (6th Cir., Dec. 17, 2007)(appellate court reversed district court’s denial of franchisor’s motion for preliminary injunction seeking to enforce non-compete in franchise agreement against former franchisee)

LAST MONTH’S CASES

Walker v. Pacific Pride Services, Inc., 2007 U.S.Dist.Lexis 87143 (N.D. Cal., Nov. 26, 2007)(summary judgment granted for the defendant/franchisor in personal injury case based on injury sustained by the franchisee’s employee on the franchisee’s premises)

Houton Petroleum, Inc. v. ConocoPhillips Co., 2007 U.S.Dist.Lexis 86869 (N.D. Cal., Nov. 16, 2007)(station owner’s motion for preliminary injunction under PMPA denied because franchisee could not establish violation of the statute’s termination requirements)

American Standard, Inc. v. Meehan, 2007 U.S.Dist.Lexis 70851 (N.D. Ohio, Sept. 27, 2007)(franchisee’s motion for preliminary injunction to prevent termination by franchisor denied because of inability to prove likelihood of success on the merits)

Curves Int'l, Inc. v. Mosbarger, 2007 U.S.Dist.Lexis 89906 (M.D. Ala., Dec. 5, 2007)(franchisor's motion for preliminary injunction against competing former franchisee denied because loss of goodwill did not satisfy irreparable harm requirement)

Rocky Mountain Chocolate Factory, Inc. v. SDMS, Inc., 2007 U.S.Dist.Lexis 88268 (D. Colo., Nov. 30, 2007)(termination of San Diego franchisee did not violate the CFIL, Cal. Corp. Code 20035)

DT Woodward, Inc. v. Mail Boxes Etc., Inc., 2007 Cal.App.Unpub.Lexis 8388 (2d App. Dist., Oct. 17, 2007)(Court of Appeal reversed the Superior Court's denial of class certification in suit by a franchisee class alleging violations of the CFIL)

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